IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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PARSHOTTAMBHAI RUPRAMBHAI UPADHYAY - Appellant(s)
Versus
VAJIR SHANKAJI RAGAJI & 2 - Defendant(s)

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Appearance :
MR DF AMIN for Appellant(s) : 1,
MR BP JOSHI for Defendant(s) : 1 - 2.
MR RAJNI H MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 14/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 27.11.84 passed by the Motor Accident Claims Tribunal (Main) Banaskantha at Palanpur in MACP No. 251 of 1982 whereby the Tribunal has awarded a sum of Rs. 35,250/- by way of compensation payable to the original claimant by the original opponent nos. 1 & 2 with running interest at the rate of 6% per annum from the date of application till realisation.

2. The original claimant had filed an application under section 110-A of the Motor Vehicle Act claiming compensation to the tune of Rs. 75,000/- in respect of the injuries suffered by him on account of an accident which occurred on 24.07.82 while the original claimant had gone to graze the animals of his master at a distance of 1 km from Deodar. At that time he was sitting on the kachcha road and the animals were grazing when a jeep bearing no. MSY 809 was coming in full speed thereby knocking down the original claimant. He sustained injuries on his shoulders, legs, ribs and other parts of the body. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr D.F Amin, learned counsel for the appellant has contended that the Tribunal relying upon the evidence produced by the appellant ought to have awarded Rs. 75,000/- by way of compensation. He has further contended that the Tribunal erred in law in holding that the vehicle in question was a transport vehicle and the opponent no.1 was not authorised to

drive transport vehicle as he was given license to drive light vehicle in-as-much as the vehicle involved in the accident is not a transport vehicle but is a light motor vehicle and that the license at Ex. 46 does not pertain to the opponent no.1 at all.

3.1 In the alternative, Mr Amin has contended that even if the vehicle in question was considered as a transport vehicle, it ought to have been noted that the vehicle was manufactured by Mahindra and Mahindra and the maximum laden weight was 2270 kgs making it a light motor vehicle as defined under sub-section (13) of section 2 of the Motor Vehicle Act.

3.2 Mr Amin has further contended that the Tribunal has committed an error in exonerating the Insurance Company from the liability and this has resulted into miscarriage of justice. He has contended that even if decree is not passed against the insurance company it should be open to the claimant to recover the amount of compensation from the insurance company and the insurance company should in turn recover the same from the owner.

3.3 Mr Amin has relied upon various decisions of the Apex Court in order to substantiate his claims. The first decision relied on by the learned counsel is in the case of **Ashok Gangadhar Maratha v Oriental Insurance Co. Ltd reported in 1999(6) SCC 620** wherein it is held that in a case where the driver had a driving licence to drive a light motor vehicle, though the insurance policy covered a transport vehicle which meant a goods carriage, the licence to drive a light motor vehicle issued in Form 6 was an effective and valid licence to drive such a vehicle.

3.4 Mr Amin has further relied on a decision of the Apex Court in the case of **National Insurance Co. Ltd. V Kusum Rai and Others reported in 2006(4)SCC 250** wherein the insurance company was asked to indemnify the claimant and later on recover the said amount from the owner of the vehicle in question.

3.5 Mr Amin has also relied on a decision of the Apex Court in the case of **National Insurance Co. Ltd v Swaran Singh reported in 2004(3) SCC 297** wherein it

is held that the liability of the insurance company is to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof thereafter.

4. Mr Sunil Parikh, learned counsel for the insurance company has supported the award of the Tribunal stating that the Tribunal has gone into the evidence placed on record in detail and passed the award in accordance with law. He has relied on a decision of this Court in the case of **Manohar J. Sindhi v Ranguba reported in 1993(1) GLR 865** wherein the insurer is absolved from liability when the vehicle involved in the accident is a goods vehicle and the driver holds a licence to drive a light motor vehicle but not a goods vehicle.

5. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the materials placed on record, more particularly, the insurance policy produced at Ex. 47 and the copy of licence produced at Ex. 46. As a result of hearing and perusal of records, I am of the opinion that the

contention raised by the learned counsel for the appellant regarding the vehicle being a light motor vehicle is contrary to that mentioned in the policy of the insurance company. In the insurance policy, the type of body of the vehicle is described as mini truck. Moreover, the said contention goes counter to the arguments which were canvassed before the Tribunal and hence the said contention cannot be accepted at this stage.

5.1 In the case of **Ashok Gangadhar Maratha (supra)**, the Apex Court has observed that there is no evidence on record and no claim has either been made by the insurer that the vehicle in question was having a permit for a goods carriage. Moreover, as per the policy, the column pertaining to driver specifically stated that the driver clause would include a person or persons entitled to drive provided that if a person holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

5.2 As regards the contention of holding a valid driving licence is concerned, in the present case, it is clearly borne out from the records being Ex. 60 that the original opponent no.1 was given a licence to drive light motor vehicle and he cannot drive a transport vehicle under that licence nor he can work as an employee to drive any vehicle. The original opponent no.1 had also given an application for obtaining driving licence for a heavy goods vehicle on 07.09.83 whereas the accident occurred quite prior to that.

5.3 It is also clearly shown in the policy that the driver would be any person including the insured or any person on behalf of the insured provided the person driving holds a valid driving licence at the time of accident or held a permanent driving license other than a learner's licence and is not disqualified from holding such a licence. In that view of the matter, it is clear that the vehicle was a mini truck and the original opponent no.1 had no valid driving licence to drive the said vehicle and

therefore there is a breach of the terms of the policy and the insurance company could not be said to be liable in the instant case.

5.4 As regards the third contention of the appellant that even if decree is not passed against the insurance company it will be open to the claimant to recover from the insurance company and the insurance company shall in turn recover the same from the owner is concerned, I am of the view that since the insurance company is not jointly and severally liable and no decree is passed against the insurance company as a result of breach of terms of policy, the insurance company cannot be made liable to satisfy the decree. Therefore, the appellant cannot take advantage of the reliance laid down in the case of **National Insurance Co. Ltd v Swaran Singh(supra)**. The contention raised by the appellant cannot be accepted and the same is rejected.

5.5 In the case of **National Insurance Co. Ltd v. Kusum Rai and Others (supra)**, the Apex Court held that when a commercial vehicle driven by a person not

possessing appropriate licence meets with an accident resulting into death, in such circumstances, the insurer could rightly set up the defence of breach of condition of the insurance contract. The Apex Court though observed that the appellant was not liable to pay the claimed amount as the driver was not possessing a valid licence and the High Court was in error in holding otherwise, the Apex Court declined interference under Art. 136 but instead granted liberty to the insurer to recover the amount from the owner of the vehicle in the manner as directed in the Nanjappan case, 2004(13) SCC 224 looking to the peculiar facts and circumstances of the case viz. the age of the victim(12 years in that case), poor background of the claimants, non-appearance of the owner of vehicle and the difficulty likely to be faced by the claimants in securing his presence etc.

6. In the premises aforesaid, the appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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